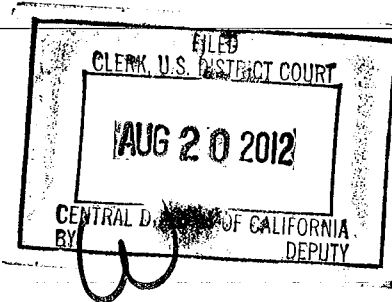


JS-6

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 JERL B. LEUTZ (SB# 253229)  
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Attorneys for Applicant  
 EARTHBOUND FILMS, LLC



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

EARTHBOUND FILMS, LLC, a  
 Delaware limited liability company,

Applicant,

vs.

EURO TV SARL, a French limited  
 liability company,

Respondent.

Case No.: CV12:5932 R (MAN2)

~~[PROPOSED]~~ JUDGMENT FOR  
 APPLICANT EARTHBOUND FILMS,  
 LLC

*(Lodged Concurrently with: (i)  
 Application to Confirm Arbitration  
 Award; (ii) Declaration of John M.  
 Genga; and (iii) Stipulation for Entry of  
 Judgment)*

[9 U.S.C. § 9]

DATE: August 20, 2012

TIME: 10:40 am

CTRM: [Judge REAL]

TO ALL PERSONS:

Pursuant to (i) the Petition for Confirmation of Arbitration Award filed herein on July 10, 2012 ("Petition") by petitioner Earthbound Films, LLC ("Earthbound" or "Petitioner") against respondent Euro TV ("Euro TV" or "Respondent"), (ii) the Final Award issued on January 11, 2012 in that certain Arbitration No. 11-19 before the Independent Film & Television Alliance ("Award"), attached as Exhibit A hereto, and (iii) the parties' Stipulation for Entry of Judgment filed herein on July 10, 2012 ("Stipulation"):

LODGED

2012 JUL 19 PM 3:49

CLERK, U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIF.  
 LOS ANGELES

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment  
2 shall and hereby does enter in accordance with the Award, in favor of Earthbound  
3 and against Euro TV, as follows:

4 1. As between Earthbound and Euro TV, Earthbound shall and does have  
5 all right, title and interest in and to that certain motion picture entitled *Earthbound*,  
6 also known as *A Little Bit of Heaven*.

7 2. Euro TV shall be and hereby is liable to pay Earthbound the sum of  
8 One Million Sixty-Nine Thousand Two Hundred Forty and 36/100 United States  
9 Dollars (US \$1,069,240.36), together with simple interest thereon at the annual rate  
10 of 3.29594% from January 11, 2012 (the "Judgment").

11 3. Interest shall continue to accrue on the Judgment at the annual rate of  
12 3.29594% from and after the date hereof.


13 4. Earthbound shall recover such attorneys' fees and costs reasonably  
14 incurred in connection with obtaining the Judgment as may be demonstrated to the  
15 satisfaction of the Court.

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17  
18 DATED: 8-17, 2012

  
\_\_\_\_\_  
Judge, United States District Court

19  
20 Presented by:

21   
22 \_\_\_\_\_  
23 John M. Genga  
24 GENGA & ASSOCIATES, P.C.  
25 Attorneys for Petitioner  
26 EARTHBOUND FILMS, LLC  
27  
28

**Exhibit A**

**Independent ■  
Film & Television  
■ ■ ■ Alliance  
Arbitration®**

10850 Wilshire Boulevard / 9th Floor  
Los Angeles, CA 90024-4321  
310-446-1000 TEL / 310-446-1600 FAX  
www.ifta-online.org / info@ifta-online.org

January 11, 2012

John M. Genga, Esq.  
Genga & Associates, P.C.  
15260 Ventura Boulevard, Suite 1810  
Sherman Oaks, CA 91403  
Via email: [jgenga@gengalaw.com](mailto:jgenga@gengalaw.com) and certified mail

Scott L. Baker, Esq.  
Baker & Associates  
1875 Century Park East, Suite 1490  
Los Angeles, CA 90067  
Via email: [slb@bakerslaw.com](mailto:slb@bakerslaw.com) and certified mail

**Re: Arbitration #11-19 – Earthbound Films, LLC v. Euro TV**

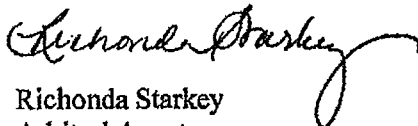
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Gentlepersons:

In accordance with Paragraph 12.3 of the applicable IFTA Rules for International Arbitration, enclosed is a fully executed Final Award rendered in this matter.

This Award is being forwarded to the Parties via email, with an original to follow via USPS certified mail. If you would like to receive the Award via courier, please provide IFTA with your courier account number no later than close of business day from the date of this letter.

Sincerely,  
IFTA

  
Richonda Starkey  
Arbitral Agent

enclosures by certified mail

cc: Michael C. Donaldson, Esq., Arbitrator – 310-277-4870 w/o attachments  
Kim Tommaselli, Senior Counsel, IFTA  
Susan Cleary, Vice President & General Counsel, IFTA

**DECLARATION OF SERVICE**

I, Richonda Starkey, declare as follows:

I act as Arbitral Agent for IFTA Arbitration in Los Angeles, California. I am over the age of eighteen years of age and am not a party to this action. IFTA's address is 10850 Wilshire Boulevard, 9<sup>th</sup> Floor, Los Angeles, CA 90024. On January 11, 2012, I served the **Final Award** on the interested parties as follows:

☒ **BY REGISTERED AND/OR CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed the party/ies indicated at the address(es) below. The envelope is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party serviced, service is presumed invalid if postal cancellation date or postage meter date is more than one day after day after date of deposit for mailing in affidavit.

☐ **BY COURIER/OVERNIGHT SERVICE:** I caused DHL Express or Federal Express to deliver a true copy of the aforementioned document(s) in a sealed envelope with airbill addressed to the party/ies indicated at the address(es) shown below.


☐ **BY FACSIMILE:** I caused the aforementioned document to be transmitted by facsimile machine to the parties and numbers indicated below. The transmissions were reported as complete, and no errors were reported by the facsimile machine. Copies of the transmission records are maintained by our office.

☐ **BY PERSONAL SERVICE:** I caused Express Group, Inc. to hand deliver a true copy of the aforementioned document(s) in a sealed envelope addressed to each person(s) named at the address(es) shown below.

☒ **BY ELECTRONIC MAIL (.PDF FORMAT):** I caused a true copy of the aforementioned document(s) to be sent via e-mail (.pdf format) to the interested party/ies at the e-mail address/es indicated below.

Executed on January 11, 2012 at Los Angeles, California.

☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
RICHONDA STARKEY  
Arbitral Agent  
IFTA Arbitration

**SERVICE LIST**

**IFTA Arbitration #11-19  
Earthbound Films, LLC v. Euro TV**

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 Email: michael@donaldsoncallif.com

ARBITRATOR

**ARBITRATION BEFORE  
 INDEPENDENT FILM AND TELEVISION ALLIANCE**

**In The Matter Of Arbitration Between**

Earthbound Films, LLC, Claimant,

vs.

EuroTV, Respondent,

and

EuroTV, Counter Claimant,

vs.

Earthbound Films, LLC, Counter Respondent.

ARBITRATION NO. 11-19

FINAL AWARD

This Arbitration is between the licensor, Earthbound Films, LLC on the one hand and the licensee, EuroTV on the other hand, with regard to the contract dated May 21, 2010 and signed by Daniel R. Stutz, authorized signatory for Earthbound Films, LLC and by Stephane Berrebi, CEO of EuroTV including its various attachments ("the "Agreement") concerning the licensing of French distribution rights of the picture entitled *Earthbound* (the Picture).

////

1 **HEARING**

2 The Arbitration Hearing commenced at 10:00 a.m. on Friday, October 7, 2011 and  
3 concluded at approximately 3:00 p.m. Present throughout the hearing were Scott Baker, counsel  
4 for Respondent and Counter-Claimant; Stephane Berrebi (via telephone), CEO of EuroTV; Neil  
5 Sacker, representing Claimant; Mark Gill, witness for Claimant; Incoronata Pagliuca ("Inc"),  
6 witness for Claimant; and Michael C. Donaldson, Arbitrator.

7 Over the course of the hearing, testimony was taken from Stephane Berrebi, CEO of  
8 EuroTV, on behalf of Respondents (by phone from France); Mark Gill, President of Millennium  
9 Films, on behalf of Claimant; and Inc Pagliuca, on behalf of Claimant.

10 After the hearing, John M. Genga, Esq. took over representation of Claimant for purposes  
11 of post-arbitration briefing.  
12

13 **JURISDICTION**

14 Jurisdiction is established in the Agreement on page 5 paragraph 11B:

15  
16 . . . Each of the parties hereto agree that any dispute under this agreement... shall  
17 be resolved by final and binding arbitration under the Rules International  
18 Arbitration of the IFTA in effect as of the date the request for arbitration is filed  
19 (the "Rules") . . . The parties agree that each will abide by the decision rendered  
20 in such arbitration and that any court having jurisdiction may enforce such  
21 decision. Each of the parties hereby submits to the exclusive jurisdiction of the  
22 courts of the Forum in all matters relating to such arbitration...

23 **EXHIBITS:**

24 The following Exhibits were admitted into evidence.

25 Exhibit 1: Email Correspondence between Inc Pagliuca and Eurotv dated April 1, 2011;

26 Exhibit 2: Email Correspondence between Inc Pagliuca and Stephane Berrebi dated  
27 February 9, 2011;

28 Exhibit 3: Email Correspondence between Mark Gill, Inc Pagliuca, and Stephane Berrebi (at  
two email addresses) (and copied to "Anne", Neil Sacker, Bernd, Dan Stutz,  
David Glasser, and Olivier Albou) dated July 29, 2010;

- 1 Exhibit 4: Email Correspondence between "Anne" and Mark Gill (and copied to Inc
- 2 Pagliuca, Berrebi, Sacker, Bernd, Stutz, Glassser, Albou, and Jean-Francois
- 3 Klein) dated July 30, 2010;
- 4 Exhibit 5: Email Correspondence between "Anne" and Inc Pagliuca dated June 23, 2010;
- 5 Exhibit 6: Email Correspondence between EuroTV and Anne dated April 4, 2011;
- 6 Exhibit 7: Email Correspondence between Inc Pagliuca, Anne, and Stephane Berrebi dated
- 7 April 2, 2011;
- 8 Exhibit 8: Letter Agreement dated April 30, 2010;
- 9 Exhibit 9: Second Letter Agreement dated May 20, 2010;
- 10 Exhibit 10: Third Letter Agreement dated June 2, 2010;
- 11 Exhibit 11: "Notice of Arbitration" and dated June 29, 2011.
- 12
- 13

14 **THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:**

15 The following facts were stipulated by all parties to be true and correct:

- 16 1. The Distribution Agreement, including its various attachments, (the Agreement) which
- 17 was attached to the Notice of Arbitration and was dated May 21, 2010 is a true and
- 18 correct copy of the Agreement signed by the parties with regard to the Picture.
- 19 2. Pursuant to the terms of the Agreement, EuroTV agreed to pay a minimum of
- 20 \$1,300,000 for various specified rights in the Picture, payable 20% (\$260,000) upon
- 21 signing of the Agreement and 80% (\$1,040,000) within thirty (30) days after receiving
- 22 a Notice of Delivery from Claimant.
- 23 3. EuroTV paid \$260,000, and is not in default with regard thereto.
- 24 4. Claimant issued the Notice of Delivery in conformance with the Agreement on or
- 25 about October 29, 2010.
- 26 5. EuroTV has not paid the balance of \$1,040,000 or any part thereof.
- 27 6. Payment of the balance is a condition precedent under the terms of the Agreement.
- 28

1 7. None of the rights in the Picture, as more specifically set forth in the Agreement, have  
2 been transferred from Claimant to EuroTV.

3  
4 Additionally, Arbitrator found the following facts:

5 8. In various emails and conversations, EuroTV promised to pay the balance, including  
6 *inter alia*, an email dated April 1, 2011.

7 9. Various email exchanges between Mr. Berrebi and Earthbound regarding payments did  
8 not mention a U.S. theatrical release.

9 10. Payment of the balance was due November 28, 2010.

10 11. Payment of the balance (as set forth in fact 6) is a condition precedent only to the  
11 grant of rights to EuroTV.

12 12. The Agreement stated at paragraph 15.2 of the Standard Terms that Earthbound "may  
13 proceed... for available relief, including canceling this Agreement.... suspending Delivery of the  
14 affected Picture.... and declaring all unpaid amounts.... Immediately due and payable."

15 13. At the time that the parties negotiated the Agreement, EuroTV was in default of a  
16 prior agreement with Earthbound Films for the distribution rights to "Law Abiding Citizen"  
17 ("LAC").

18 14. Earthbound Films' principals knew that EuroTV was experiencing severe economic  
19 pressure because EuroTV had made various promises to pay for LAC and had missed all such  
20 deadlines.

21 15. EuroTV entered into contracts to distribute LAC in France and would be in breach of  
22 those contracts if EuroTV was not able to obtain distribution rights to LAC. Earthbound Films  
23 was aware of this fact.

24 16. EuroTV was not able to meet any of the financial arrangements that would have been  
25 satisfactory to Earthbound.

26 17. As a final measure, to help EuroTV avoid default on its LAC agreements, Earthbound  
27 proposed that it would renegotiate the LAC distribution contract with EuroTV if EuroTV would  
28

1 enter into a distribution agreement for the motion picture entitled, *Earthbound* (the "Picture").  
2 This occurred at a meeting in Cannes, France during the Marche de Film in May of 2010.

3 18. The President of EuroTV took the script and the cast list of the Picture with him when  
4 he left the meeting, read it, and a day or two later told *Earthbound* that he liked the script and  
5 was satisfied with the casting, and would agree to buy the Picture.

6 19. During discussions over such an arrangement, US theatrical release was discussed.  
7 *Earthbound* was hoping for a wide release. No distributor had agreed to release the Picture in the  
8 U.S. at the time.

9 20. At least two companies were discussed as possible distributors for the Picture: The  
10 Weinstein Company and The Film Department. Weinstein was known to EuroTV as a  
11 recognized U.S. distributor of theatrical films.

12 21. Reference to a potential wide release took place as a part of discussions in two  
13 separate meetings, on or about May 13, 2010 and a few days thereafter for follow-up, in the suite  
14 of *Earthbound*'s sales agent Weinstein Global Film Corp. at the Noga Hilton Hotel in Cannes,  
15 France.

16 22. If a commitment regarding the theatrical release of a film is a part of the  
17 consideration in a foreign sales agreement, it would be considered a material term and included  
18 in the agreement to purchase the film. No such provision exists in the Agreement.

19 23. The Agreement contained the following provision in paragraph 21.6: "This  
20 Agreement contains the entire understanding of the Parties regarding its subject matter. It  
21 supersedes all previous written or oral negotiations, deal memos, understandings or  
22 representations between the Parties, if any. Each Party expressly waives any right to rely on  
23 such negotiations, understandings or representations, if any."

24 24. On May 20, 2010, EuroTV executed a letter agreement renegotiating the LAC  
25 distribution agreement to include a term that EuroTV agreed to execute the *Earthbound*  
26 Agreement.  
27  
28

25. It was usual for Earthbound Films to prepare a short form agreement prior to preparing a long form, final distribution agreement, but that was not done in regard to the Earthbound Agreement because they already had a fully negotiated agreement for LAC which could be used for the Picture.

26. The contracted price for the Picture in the Agreement is a total of \$1,300,000.

27. The only estimate of the current value of the Picture is \$50-60,000 U.S.

28. The sale price of the Picture to EuroTV for French rights was in line with the sale price of the Picture to other buyers in other territories, specifically the U.K. and Germany.

29. Provisions for interest calculations are discussed in the Agreement in paragraph 9.9, as follows: "Any payment not made when due will, in addition to any other right or remedy of Licensor, incur a finance charge at the lesser of three base points over the 3-month London Inter Bank Offered Rate (LIBOR+3) on the date payment was due or the highest applicable legal contract rate. This finance charge will accrue from the date the payment was due until it is paid in full."

30. Interest is calculated from November 28, 2010 to December 28, 2011 at the LIBOR rate dated November 29, 2010 of 0.29594% + 3%, as follows:

$$\$1,040,000.00 \times 3.29594\% = \$34,277.78 \text{ per annum}$$

$$\$34,277.78 / 365 = \$93.91 \text{ per day}$$

$$396 \text{ days (inclusive)} \times \$93.91 = \$37,188.36$$

31. The Agreement contained the following provisions:

#### **5. Rights Granted....**

##### **A. Cinematic Rights:**

	<b>Licensed</b>	<b>Holdback</b>
Theatrical	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See Release Requirements Language in Par. 6.
Non-Theatrical	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Until __ months from First Theatrical Release
Public Video	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Until __ months from First Theatrical Release

*\*Licensee shall release no earlier than Day and Date with the Initial U.S. Release*

**B. Ancillary Rights:**

	<b>Licensed</b>	<b>Holdback</b>
Airline	[ ] Yes [ X ] No	Until N/A months from Initial U.S. Release
Ship	[ ] Yes [ X ] No	Until N/A months from Initial U.S. Release
Hotel	[ X ] Yes [ ] No	Until <u>3</u> months from Initial U.S. Release

**C. Video Rights:**

	<b>Licensed</b>	<b>Holdback</b>
Home Video	[ X ] Yes	Until <u>**</u> months from Initial Theatrical Release in the Territory
Commercial	[ X ] Yes	Until <u>**</u> months from Initial Theatrical Release in the Territory
Video Sell-thru	[ X ] Yes	Until <u>**</u> months from Initial Theatrical Release in the Territory
Mail-order	[ X ] Yes	Until <u>**</u> months from Initial Theatrical Release in the Territory

*\*\* Licensee shall release no earlier than: (i) 6 months following Initial Theatrical Release in the Territory, or (ii) Day and Date with the Initial Release in the U.S.*

**D. Television Rights:**

	<b>Licensed</b>	<b>Holdback</b>
<u>Pay-per-View TV</u>		
Terrestrial	[ X ] Yes [ ] No	Until <u>6</u> months from Initial Theatrical Release in Territory
Cable	[ X ] Yes [ ] No	Until <u>6</u> months from Initial Theatrical Release in Territory
Satellite	[ X ] Yes [ ] No	Until <u>6</u> months from Initial Theatrical Release in Territory
Video On Demand	[ X ] Yes [ ] No	Until <u>6</u> months from Initial Theatrical Release in Territory
Catch Up TV:	[ X ] Yes [ ] No	Until <u>6</u> months from Initial Theatrical Release in Territory
SVOD	[ X ] Yes [ ] No	Until <u>6</u> months from Initial Theatrical Release in Territory

(Provided Licensee acknowledges SVOD rights are frozen in the Territory during the Term.)

Pay TV

Terrestrial	[ X ] Yes [ ] No	Until <u>9</u> months from Initial Theatrical Release in Territory
-------------	------------------	--

1 Cable ☒ Yes ☐ No Until 9 months from Initial Theatrical Release in Territory

2 Satellite ☒ Yes ☐ No Until 9 months from Initial Theatrical Release in Territory

3

4 Free TV

5 Terrestrial ☒ Yes ☐ No Until 15 months from Initial Theatrical Release in Territory

6 Cable ☒ Yes ☐ No Until 15 months from Initial Theatrical Release in Territory

7 Satellite ☒ Yes ☐ No Until 15 months from Initial Theatrical Release in Territory

8

9

10 **6. Release Requirements:** With respect to the Theatrical Release in the Territory,  
 11 Licensee may release the Picture on the earlier of (i) Day and Date with the U.S. Release and (ii)  
 12 (9) months from Notice to Licensee stating that the materials from which commercially  
 13 acceptable release prints of the Picture can be manufactured (at Licensee's cost) are available (the  
 14 "NOD"). License may not exploit any Licensed Right before the end of its applicable Holdback  
 15 Period. Once determined, Licensee shall provide Licensors with all release dates for the Picture  
 16 in the Territory.

17 In the event the US Distributor requires a longer holdback of any of the Licensed  
 18 Rights in the Territory, than those set forth in Section 5 hereof, then Licensee shall comply with  
 19 any such longer holdback.

20 32. The communications between the parties and their behavior at all relevant times were  
 21 in preparation for a release of the Picture in the French territories as soon as the final payment  
 22 was made by EuroTV to Earthbound, without any consideration of whether there had been or had  
 23 not been a U.S. theatrical release.

24 33. From the date EuroTV entered the Agreement to the date of the Arbitration Hearing,  
 25 Earthbound has made no effort to sell the French distribution rights in the Picture to any buyer  
 26 other than EuroTV.

27 34. The total Arbitrator's fee is \$11,970. The parties have paid a total of \$8,000, leaving  
 28 a balance of \$3,970.

1 **DISCUSSION:**

2 Counsel for Respondent and Cross-Complainant Euro-TV has tried valiantly to raise  
3 defenses from the factual ashes of this case. The facts simply don't support any theory of law or  
4 common sense that would justify a finding that payment is not due to Earthbound Films. The  
5 most ludicrous defense is, of course, that Earthbound has not been damaged by Euro-TV's  
6 inability to meet its financial obligations under the Agreement. Euro-TV's CEO provided cogent  
7 testimony as to exactly how badly Earthbound has been damaged. Each proffered defense will  
8 be briefly discussed in the order in which they appear in the Response. Each one fails for the  
9 reasons set forth below.

- 10
- 11 1. No actual damages because the rights never transferred to EuroTV. The logic is  
12 baffling. Claimant had a signed contract for \$1.3 million, received \$260,000, and is left  
13 with a film that EuroTV's CEO says is today worth between \$50,000 and \$60,000. Of  
14 course, the Claimant has been damaged. Yes, Earthbound still has the French rights, but-  
15 according to Respondent- those rights have little value today.
- 16
- 17 2. Payment of the full amount is a condition precedent, so the contract is not valid. The  
18 problem is that EuroTV is reading the condition precedent too broadly. The condition  
19 precedent is very narrow and only prescribes the transfer in rights. It is not a condition  
20 precedent to the validity of the contract itself. However, the fact that the rights did not  
21 transfer does not mean that the rights were available for sale by Earthbound or that the  
22 promise of EuroTV to pay the balance of \$1,040,000.00 was not valid and enforceable.
- 23 3. Failure to mitigate. Obviously, Earthbound might have made inquiries of other French  
24 clients at any time during their unsuccessful efforts to collect the balance due under the  
25 Agreement. But why would they? Any such effort would trigger a requirement to clean  
26 up the chain of title. And why should they? During most of this time, EuroTV kept  
27 giving assurances that the full contract amount would be paid. EuroTV was a recognized  
28 buyer. Earthbound had other business with them. Earthbound had no incentive – and  
several disincentives – to re-selling this film while they still had an enforceable contract

1 with a buyer who kept promising to pay. As a legal matter, the obligation to mitigate  
 2 cannot arise prior to a point in time when one has a legal right to mitigate. It is this  
 3 award that gives Earthbound such a right. At best, the duty to mitigate might have been  
 4 triggered at the point in time when EuroTV abandoned its position that final payment  
 5 would be made. EuroTV seems to be asking the Arbitrator to completely ignore its  
 6 promises of payment which were made in spite of the fact that EuroTV wanted  
 7 Earthbound to detrimentally rely on those very same promises at the time they were  
 8 made. Perhaps there was a point in time when the hopelessness of the situation was  
 9 sufficiently clear that the duty to mitigate was triggered, much like the landlord whose  
 10 tenant actually moves out of an apartment. The record is devoid of exactly when that  
 11 earlier date might have been. However, Claimant still has the rights and can market  
 12 them.

- 13  
14 4. Interestingly, Earthbound did not offer any evidence of reductions against such estimate  
 15 such as cost of sales, commissions, markets, and the like. Any figures used to reduce the  
 16 gross amount estimated by Respondent would be speculation by the Arbitrator. The  
 17 record is inadequate to reduce the estimate to a present value. Therefore, the only  
 18 supportable conclusion is to reduce the damages by the low estimate of its present day  
 19 value.
- 20 5. Awarding Money Damages is Impermissible because it amounts to specific performance.  
 21 Two cases were cited in support of this proposition. Neither apply. Here, the Agreement  
 22 is clear. Its terms will be enforced.
- 23 6. Duress because if EuroTV had not purchased the Picture it would have lost the rights to  
 24 LAC. This argument turns the facts on their head in order to create the impression of  
 25 duress. EuroTV was going to lose the rights to LAC (along with a million dollars in  
 26 deposit money.) EuroTV was not able to put a financial solution on the table that would  
 27 satisfy Earthbound. It is undisputed that the possibility of purchasing the Picture only  
 28 arose after all other methods of EuroTV meeting its obligations regarding LAC had

1 failed. Selling anything of value to a customer who may not be able to pay for it is  
 2 always a shaky proposition. The offer to sell the Picture to EuroTV was a last ditch  
 3 attempt to help EuroTV save LAC. It was not something that was forced on EuroTV by  
 4 Earthbound. The deal was only consummated after EuroTV read and liked the script, and  
 5 approved of the cast. The price was a fair market price at the time.

- 6 6. Fraud based on preliminary mention of a wide release. This fails for three reasons. First,  
 7 there is the integration clause noted above at Finding of Fact #23. It states clearly that  
 8 EuroTV is not relying on any such statements. Second, is the practice of both sides to  
 9 spell out such essential terms when they are part of the deal. The lack of such clause  
 10 indicates that there was no such agreement. Third- and possibly most importantly- the  
 11 vagueness of the conversation as reported by EuroTV's CEO who wasn't sure who made  
 12 the comments, reported that no P&A commitment was part of the conversation and there  
 13 was no attached distributor. He mentioned two possible distributors which confirms that  
 14 no distributor (and perforce, no distribution) was in place when the Agreement was  
 15 signed.  
 16

17  
 18 **THE ARBITRATOR REACHES THE FOLLOWING CONCLUSIONS OF LAW:**  
 19

- 20 1. The Agreement constitutes a valid contract.  
 21 2. Earthbound did not induce EuroTV's consent to the Agreement by fraud and there  
 22 was no mistake of fact at the time of execution of the Agreement.  
 23 3. Earthbound did not induce EuroTV's consent to the Agreement by duress or  
 24 undue influence. Earthbound did no wrongful act.  
 25 4. There was no failure of any "Condition Precedent" to EuroTV's obligation to pay.  
 26 5. Earthbound suffered and is entitled to recover damages in the amount of the  
 27 unpaid balance (\$1,040,000.00) less \$50,000 present value of the film.  
 28 6. Earthbound is entitled to interest on damages and recovery of its costs and  
 reasonable attorneys' fees.

- 1           7. Interest is calculated from November 28, 2010 to December 28, 2011 at the  
2           LIBOR rate on November 29, 2010 of 0.29594% + 3%, amounting to \$37,188.36.  
3

4           **IT IS ORDERED that:**  
5

6           1. EuroTV shall pay Earthbound damages of \$1,040,000, plus interest of \$37,188.36  
7           less \$50,000; attorneys' fees of \$20,332; costs of \$8,750; IFTA fees of \$5,000; paid Arbitrator  
8           fees of \$4,000 plus the additional \$3,970 Earthbound must pay for a total of \$1,069,240.36.  
9


10           2. All distribution rights in French speaking territories remain the property of  
11           Earthbound.

12           3. Claimant is ordered to pay the balance of \$3,970 owed to the Arbitrator  
13           forthwith.

14           4. EuroTV shall recover nothing on its counterclaims.  
15

16           **IT IS SO ORDERED.**  
17

18           DATED: January 6, 2012  
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20             
21           MICHAEL C. DONALDSON  
22           Arbitrator  
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